

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CMBB LLC,

Case No. 08 cv 1201

Plaintiff,

v.

Judge Shadur

LOCKWOOD MANUFACTURING, INC., et al.,

Magistrate Judge Valdez

Defendants.

AFFIDAVIT OF PAUL WEBEL

Paul Webel, being first duly cautioned and sworn, states as follows:

1. I am a Computer Forensic Analyst with the company Vestige, Ltd., 46 Public Square, Suite 220, Medina, Ohio 44256-2284. I graduated from The University of Akron in 2003 with a degree in Management of Information Systems. I earned my Certified Computer Examiner certificate from the International Society of Forensic Computer Examiners in 2006.
2. On September 14, 2007 Jennifer Bryan, pursuant to the subpoena, provided access to a Sony Vaio laptop computer to Vestige's agent, Anthony Balzanto of Digital Enterprises, Inc., to create a forensic copy of the computer's hard drive. The forensic copy of the laptop hard drive (hereinafter referred to as the Forensic Image) is an exact reproduction of all visible and invisible content and artifacts resident upon the original hard

drive. The Forensic Image was mailed to Vestige's forensic laboratory facilities in Medina, Ohio and a forensic analysis was begun. Standard forensic procedures were used to ensure a complete accurate copy of the Sony Vaio laptop hard drive was made. An accurate copy is determined by comparing the digital fingerprint of the original computer hard drive and the digital fingerprint of the Forensic image. Both fingerprints matched indicating an accurate, complete copy of the Sony Vaio laptop computer.

3. Analysis of the Forensic Image identified two processes that were manually launched on both the day before the Forensic Image was created and minutes prior to the creation of the Forensic Image on September 14, 2007. On September 13, 2007 2:34 PM CDT DiskCleanup was manually run using the "jenny" account on the Sony Vaio laptop. DiskCleanup is a process included in the Windows operating system that marks for deletion various files, including Internet files, Program files, Recycle Bin files, and Log files. These files serve an evidentiary function in a case because they not only help explain how the computer is being used, but they also contain content that could be relevant in a case. For example, Internet files contain web email, evidence of file copying, Internet search history, and file transfer history. Recycle Bin files contain the information necessary to rebuild deleted files including documents, email, spreadsheets, pdf's, program files and log files contain information regarding activities that took place on a computer system, including the

dates programs were installed and the dates these programs were used. Vestige's analysis determined that the DiskCleanup process had never been launched prior to September. Since DiskCleanup was never run on this computer until the day before the Forensic Image was made, Vestige infers that launching the DiskCleanup process was done outside the normal maintenance activities of this computer system. It is reasonable to infer this process was run to destroy data before the Forensic image could be made.

4. Disk Defragmentation is another process included in the Windows operating system. Defragmentation moves the individual, electronic containers that comprise discrete files so that these containers are contiguous to one another. Keeping the containers contiguous permits the Windows operating system to quickly locate and load files for use. Moving files using Disk Defragmentation, however, results in data destruction because files that are moved to a new location overwrite the data resident at the new location. There is no known method to predict the location to which the computer system will move files during the Defragmentation process, and there is no known method to predict the information that will be overwritten and destroyed. All types of data could be destroyed by this process including emails, documents, spreadsheets, log files, and databases. Vestige's analysis indicated that the Disk Defragmentation process was manually launched and run one hour before Vestige arrived

on-site to create the Forensic Image. The process was run under the "jenny" account 9/14/2007 8:39:18 AM CDT. Prior to this time and date, the Disk Defragmentation process had been launched only one time; the exact date and time of this prior use, however, cannot be determined. Because Disk Defragmentation was manually launched immediately prior to the creation of the Forensic Image, Vestige infers that the process was launched to destroy computer data.

5. A keyword search was run over the Forensic Image to identify those files that were responsive. The number of files responsive to a particular keyword is as follows:

Cainco – 1,168 (631 are Emails)

Chicago Metallic – 2,872 (256 are Emails)

Focus Products – 1,096 (87 are Emails)

Mario Casarin – 468 (396 are Emails)

Patrick Murray – 1,228 (1009 are Emails)

6. On January 18, 2006, a "Chicago Metallic" folder was created on the laptop that contained 1,441 pdf files.
7. Attached hereto as Exhibit A is a true and accurate printout of instant messages created using a program named Skype that were recovered from the Forensic Image.

Further affiant sayeth naught.



Paul Weibel

Sworn to and subscribed in my presence this ___ day of June, 2008.



Notary Public

LINDA McELROY
Notary Public, State of Ohio, Cuy. Cty.
My commission expires Oct. 5, 2010

EXHIBIT A

- U:\D\Documents and Settings\jenny\Application Data\Skype\jennifer_bryan (Jennifer Bryan)
MD5: 16483CBF83093E083F6547BDB076E813
 - o (juanluiscubamex)
 - o (aakkurt)
 - o Achell Hector (achell2)
 - o adrian reves (dominic20005)
 - o aldilo3 (scorpion14976)
 - o Alex G (bruno6446)
 - o Araceli Danforth (aracelidanforth)
 - o Bennie (thehammer2051)
 - o berk (berk343434)
 - o Bryan Rush (rushtribe)
 - o Carol Murray (carol_murray)
 - o Chris (didian321465)
 - o Chris Mathieson (cognoscento)
 - o Discovery (fly_alnt)
 - o Echo / Sound Test Service (echo123)
 - o eduardo piereck (eduardo.piereck)
 - o emir resul (emirresul)
 - o Francis Bryan (francis.bryan)
 - o francis john bryan (frankbryan8095)
 - o Gisela (giselacasarin)
 - o GoL ! eoL.Damien (go6o.val)
 - o harold (haroldbull)
 - o Heidi Kuster (heidikuster)
 - o Janice Cassidy (janice_cassidy)
 - o Janice Cassidy (janice300)
 - o kemaluslu (kemal20051969)
 - o Leonardo (costansi)
 - o Mario Arlindo Casarin Jr (mariocasarin2005)
 - o mmhir_m (mmhir_m)
 - o Mr ZAIT Lhoucine (ambassadortravel2006)
 - o Napz Smart (napz.smart)
 - o P173uLs™ (xogito)
 - o pacificss (pacificss62)
 - o Patrick Murray (plmmur)
 - o rafal sameer (rafal_sameer)
 - o Ray (goodtimeseeker)
 - o ReisAli (reis_ali)
 - o samir (fimbiscc)
 - o sandy.zhao (sandy_zhao304)
 - o Sarunas Griganavicius (sarunas111)
 - o Sharon Butler (sharon_butler)
 - o sino-canada (sino-canada)

Chat Base	U:\D\Documents and Settings\jenny\Application Data\Skype\jennifer_bryan		
Owner Info			
UIN	jennifer_bryan	First Name	Jennifer Bryan
Nick Name	Jennifer Bryan	Last Name	

10	2006-01-17T21:42:57	Bryan	So not fair.
11	2006-01-17T21:43:29	sharon_butler	yeay all the winning I did, didn't work either - have to find another tactic
12	2006-01-17T21:44:01	Jennifer Bryan	I thought you were going to show me how to use
13	2006-01-17T21:44:19	sharon_butler	oh yeah the thingy
14	2006-01-17T21:44:26	Jennifer Bryan	Ooops. I though you were going to show me how to use the Lockwood computer system.....
15	2006-01-17T21:45:46	sharon_butler	oh that yeah I should have brought that up who else can show you not patrick for sure he standing over my shoulder
16	2006-01-17T21:46:00	sharon_butler	lol
17	2006-01-17T21:46:04	Jennifer Bryan	hahahaha
18	2006-01-17T21:46:44	sharon_butler	He left pretty much doing ha ha aha
19	2006-01-17T21:47:03	Jennifer Bryan	Sorry, I tried
20	2006-01-17T21:48:23	sharon_butler	Yeah maybe if we keep at it he just me wear down he does tell me to get lost when I start bugging might work
21	2006-01-17T21:49:34	Jennifer Bryan	Good luck
22	2006-01-17T21:49:52	sharon_butler	yeah I'll let you know
23	2006-01-23T22:12:14	Jennifer Bryan	Just wanted to update everyone on the address for our new warehouse in the US. It is only 10 minutes from my office and I will visit frequently once things start moving. We are renting space in an existing warehouse and sharing their current warehouse staff, which is saving us money and I don't have to learn how to drive a fork lift.... bonus. Warehouse: Lockwood Manufacturing 5201 Mann Drive Ringwood, IL USA 60072 Office: Jennifer Bryan Lockwood Manufacturing 2917 Virginia Avenue McHenry, IL USA 60050 815-578-4269 Office Phone/Fax 815-482-9669 Mobile jennifer0010@sbcglobal.net Please send any small packages or samples to my office, but all larger skids, boxes, samples, stock inventory will ship direct to warehouse. Mark to my attention (except for stock inventory). Thanks, Jenny
24	2006-01-24T13:45:03	sharon_butler	great news Jenny - good luck
25	2006-01-24T15:11:23	Jennifer Bryan	Thanks Sharon
26	2006-02-17T21:55:43	sharon_butler	Jen - heard you have an American price list could you check the price on H.D. our part #10341 3 r of 6 and 10362 Hamburger 4 r 6
27	2006-02-17T22:11:39	Jennifer Bryan	I will see what I can find.
			Jenny, was just speaking to Gisela, forgot its a holiday

274	2006-05-24T14:19:48	Jennifer Bryan	Labree's on the conference call. The number is 207-827-6123 hit 0 and ask to page Ira
275	2006-05-24T14:22:11	plmmur	yes
276	2006-05-26T15:01:43	plmmur	can you talk for a minute
277	2006-05-26T15:01:55	Jennifer Bryan	Sure
278	2006-05-26T15:07:06	Jennifer Bryan	653...500 654...250 655....500 Or, just do 250 of each for me and keep 250 of each on hand in Brantford for my safety stock.
279	2006-05-26T17:42:28	plmmur	I got a call from Federal Bakers who is interested in 150 or 300 - 15352 3-11/16" 20-on muffin pans. What price would you suggest?
280	2006-05-26T17:46:37	Jennifer Bryan	\$48.05 net for 150.... less 5% or 3% for 300 each
281	2006-05-26T17:48:38	Jennifer Bryan	Did ya get that?
282	2006-05-26T17:48:54	plmmur	yes 5% for 300?
283	2006-05-26T17:49:07	plmmur	45.65
284	2006-05-26T17:49:48	plmmur	If we get the sale we should increase the order with Cainco.
285	2006-05-26T17:50:30	Jennifer Bryan	Normally I would use 5% for 500, so it is your call. I have been more aggressive trying to stir up new business, so 5% would probably get it if APC is after it.
286	2006-05-26T17:51:41	Jennifer Bryan	We should definitely increase our order if we get it.
287	2006-05-26T17:52:39	plmmur	There is also a 2.5% duty if we ship from Brazil to Canada to US
288	2006-05-26T17:53:54	Jennifer Bryan	Patrick, I don't think we can consider that if we want to compete with CM/APC. Aren't we shipping right to Ringwood? Where is Federal Bakers located?
289	2006-05-26T18:12:17	Jennifer Bryan	Heading up north soon Pat, I will have my cell "on" (hahaha) and I will finish up the lead when I return Monday afternoon. Have a great weekend, and get some rest.... It was a long week! Jen
290	2006-05-26T18:12:51	plmmur	ok have fun
291	2006-05-26T18:58:48	plmmur	yes
292	2006-05-30T13:56:22	plmmur	Jennifer did you get a chance to look at Mario's drawing of the twinkie pan. Do you have any idea what the SP would be for 1000 pcs?
293	2006-05-30T13:57:21	Jennifer Bryan	Yes, sent him an email.... I will copy you
294	2006-05-30T13:57:28	plmmur	thx
295	2006-05-30T15:32:43	plmmur	Jenny Federal Bakers in Chicago wants 1500 16 Ga. sheet pans. I can get them from Advanced. What price would you suggest for 1500 pcs. By the way our cost landed in Ringwood is \$6.60 shipped in plain boxes unmarked
296	2006-05-30T15:39:33	Jennifer Bryan	Usually second column is 5% (240-999), 1,000 and over would be less another 5%. Using the pricelist I created..... \$8.80 net, less 5% (\$8.36), less another 5% = \$7.94 for 1,500 sheet pans. Sheet pan lines in the US have become more of a break even product group needed to get the other pan business, so profit won't be so attractive. (Add \$1.50 net for glaze if needed).

171	2006-07-24T14:22:20	sharon_butler	note, haven't had a chance to pull it I will wait for the charges for fed add to the, let Brenda know the charges, etc etc. I want to know how it is going with you? Everything going as planned?
172	2006-07-24T14:32:23	Jennifer Bryan	I know, sometimes when you are the poor little pony left to run the show, I feel for ya because I can tell it gets very hectic over there.
173	2006-07-24T14:33:37	sharon_butler	thanks!
174	2006-07-24T14:39:04	Jennifer Bryan	Been slow, but gong good now. The catalogs came in and look fabulous. Sent some over to your office. Inventory is starting to come in, but I still only have 40 of 140 items, which makes it hard to go out and sell product we don't have. I know you just received a Cainco container and one is coming to Ringwood. That should be me a bit closer. I am going to start calling on many of the leads and customers I want to get in at, but couldn't without product. I am still hesitant since I have no muffin line and many other items, but I can't wait any longer. Getting customers to swithc over to Lockwood won't be that difficult, but getting them to switch and then telling them we can't fill their orders will send them right back to the competition (APC/CM)..... Putting a big mailing together with the new catalog to all the show leads we had plus many old CM customers, so we should be seeing some activity soon. Getting there....
175	2006-07-24T14:56:45	sharon_butler	Sounds good, I know how hard it must be to sell what you dont have as here just trying to keep up with the orders that we cant fill - I am trying to make sure I call the customers to let them know about the wait time or delays but it is difficult to stay on top of it all. Just rec'd a call to cancel an order due to the wait time on the 10400 (4 st bread). It would be a shame to finally get in somewhere and we cant supply that is a pretty hard sell. I can't wait to see the catalogs, you did a great job on them and I know it has been alot of work. Will be talking to you.....
176	2006-07-24T14:57:33	Jennifer Bryan	Thanks Canada.....talk to ya soon
177	2006-08-08T17:41:27	sharon_butler	Hey you, yes we were off yesterday. It was great, everyone is here today but our computers just got up and running. So I just saw you email. Skype and everying was down. 5 wave bag.I dont think you do. I show all 5 waves here we are very short on the 19680's but were you looking for the 19780's the standard ones. I show all in Brantford 19780's we have about 1000 as for the 19680's none
178	2006-08-08T17:46:54	Jennifer Bryan	Help me out. What is a 19780 and how does it differ from the 19680 ??? Same but not nesting?
			19780's are suppose to be exactly the same except they

257	2006-09-14T14:57:19	sharon_butler	sorry about the spelling, trying to talk on the phone at the same time oops
258	2006-09-14T14:57:56	Jennifer Bryan	ok
259	2006-09-14T14:58:33	sharon_butler	why where you kicking your wall?
260	2006-09-14T14:59:35	Jennifer Bryan	The plug is broke and I have it taped to the wall... it comes out all the freakin time. I plugged it back in last night and got bombarded with Skypes and email. Geeeeeceez I shoudl be blonde
261	2006-09-14T15:01:57	sharon_butler	maybe you are!!! Or try duct tape Ted uses it for everyting
262	2006-09-14T15:02:17	Jennifer Bryan	Everything? hahahaha
263	2006-09-14T15:04:31	sharon_butler	smart ass
264	2006-09-14T15:04:49	Jennifer Bryan	hehehe
265	2006-09-21T13:34:20	sharon_butler	j, I just got your message on Panera Bread, sounds great!!, but no where on the emails is my name or email address, isn't weird that I got the mail. Actual heading says from Jennifer to Jenniger weird. Did you mean to send it to me?
266	2006-09-21T13:35:40	sharon_butler	I am glad you did
267	2006-09-21T13:37:32	Jennifer Bryan	Yes, I just inserted yours and Carol's names in the blind CC area.
268	2006-09-21T13:39:26	sharon_butler	oh, that then its not so weird - hope you get this one keep me posted. You gonna' sell sell sell
269	2006-09-21T13:40:09	Jennifer Bryan	Thanks DD. That is the plan, plan, plan...hehehe
270	2006-10-02T17:39:14	sharon_butler	Jenny you there?
271	2006-10-05T15:49:04	sharon_butler	Jenny, everting go okay with the paperwork for shipping yesterday?
272	2006-10-05T15:49:43	Jennifer Bryan	Do you mean the Naturebake and Bake n Joy? those are going today.
273	2006-10-05T15:50:31	sharon_butler	okay, but you did get me email about using the same paperwork for Naturebake just enter the shipped qty?
274	2006-10-05T15:51:30	Jennifer Bryan	Yep
275	2006-10-05T15:51:44	sharon_butler	thanks
276	2006-10-05T15:51:49	Jennifer Bryan	yep
277	2006-10-05T15:51:59	sharon_butler	you pissed off or something
278	2006-10-05T15:59:14	Jennifer Bryan	No.... Having a really bad week. Hey... just talked to Joanne... I did a walk through of the Cainco stuff and now she just did and neither of us found the item number needed for the Bake n Joy order. The shipment came with no kind of packing list, so I don't know if we received what we think we did unless I go do a physical inventory of what came in. Can you get a

			packing list from someone at Cainco? I found lots and lots of 13530, but no 15350. Help!
279	2006-10-05T15:59:59	sharon_butler	okay I will see what I can do Gisela is in Germany give me a minute
280	2006-10-05T16:00:11	Jennifer Bryan	Thanks Canada
281	2006-10-05T16:01:15	Jennifer Bryan	Who has our export paperwork? Janice? Forwarder? Someone should have a packing list...
282	2006-10-05T16:03:19	sharon_butler	yes, Carol is going to send you the packlist, by email or fax whichdo you want
283	2006-10-05T16:08:18	sharon_butler	Carol is faxing through to you now
284	2006-10-05T16:42:53	Jennifer Bryan	Got it. Shows them on there.... Ugh. They used the pre-printed boxes they had made that show 3 number options and a checked box. I didn't even see this number as a box check option.... I will head over there in a bit and go thru all of it. Let you know...
285	2006-10-05T17:27:15	sharon_butler	okay thanks
286	2006-10-05T17:36:29	Jennifer Bryan	Are you able to find in the system somewhere what we paid for an 18 x 26 muffin pan from Cainco... say the 10321
287	2006-10-05T17:41:56	sharon_butler	Jenny could you have just got a call from NJ State Prison?
288	2006-10-05T17:42:23	Jennifer Bryan	Why, what did I do now?
289	2006-10-05T17:42:34	Jennifer Bryan	hahaha
290	2006-10-05T17:43:30	sharon_butler	nothing but I could report you! Just got a call fro 700 #10326 from Tony at the prison - what is your price on that?
291	2006-10-05T17:43:31	Jennifer Bryan	No, I did not. If I do, I will try and route through a dealer. Federal paperwork is a nasty, nasty thing and usually you get flooded with dealers all bidding on the same quote
292	2006-10-05T17:44:50	sharon_butler	We were suppose to set up with them as they have asked us a few times but this did not come via regular route, actually phoned usually it is by fax and tons of paper. I Still want to call him back with something as Patrick was interested in us getting set up with them, Janice has the paperwor,
293	2006-10-05T17:57:52	sharon_butler	Hey do you know a dealer that is set up to do this?
294	2006-10-05T18:01:17	Jennifer Bryan	Ok... Net price for 700 qty is \$22.94
295	2006-10-18T16:17:14	sharon_butler	Do you still need me to call you
296	2006-10-18T16:17:23	Jennifer Bryan	nope
297	2006-10-18T20:23:53	sharon_butler	fine
298	2006-11-08T16:28:43	Jennifer Bryan	You having phone problems there Canada?

Top			
Contact			
UIN	plmmur	Nick Name	Patrick Murray
First Name	Patrick Murray	Last Name	
		Email	
		Age	40
Top			
Messages			
N#	Date/Time	Sender	Text
1	2006-01-17T17:11:18	plmmur	<contacts alt="[Contacts enclosed. Please upgrade to latest Skype version to receive contacts.]"><c t="s" s="carol_murray" f="Carol Murray"/><c t="s" s="giselacasarin" f="Gisela"/><c t="s" s="janice_cassidy" f="Janice Cassidy"/><c t="s" s="mariocasarin2005" f="Mario Arlindo Casarin Jr" d="Mario Casarin"/><c t="s" s="sharon_butler" f="Sharon Butler"/></contacts>
2	2006-01-17T17:11:54	plmmur	hello
3	2006-01-17T17:12:00	plmmur	cool
4	2006-01-17T17:14:08	Jennifer Bryan	Way Cool
5	2006-01-17T17:16:06	plmmur	I am reviewing what you sent on Blackberry, but here is the stock analysis I have been working on. I have an appt. with B2 Design first thing this morning to go over some catalog and brochure ideas and get a quote. Also a 1:00 appt. to look at another warehouse, haven't found the right one yet. I will call you when I am back in my office to discuss the spreadsheet I just sent. "G" at the end of each item means glazed. Lockwood and items without a cross reference are at bottom of spreadsheet. Pricelist is coming along good. Still need access to Cainco site to grab the catalog and picture files. I will contact Mario for that. Jen
6	2006-01-17T21:07:19	plmmur	jenny?
7	2006-01-17T21:07:28	Jennifer Bryan	Hey
8	2006-01-17T21:07:55	Jennifer Bryan	Been Skyping with Gisela, what a pistol.
9	2006-01-17T21:09:25	plmmur	Can you arrange 2 hotel rooms where ever you thing is ok 1 for 2 nights / 1 for 3 nights can you email me the name and address. I sent you my itinerary by email did you receive it.
10	2006-01-17T21:10:52	Jennifer Bryan	I was just looking at hotels as you skyped me. I did not get an email from you... jennifer0010@sbcglobal.net
11	2006-01-17T21:13:25	plmmur	ok resent
12	2006-01-17T21:17:55	plmmur	did you get it
13	2006-01-17T21:40:59	Jennifer Bryan	yes. I will confirm your hotel arrangements
14	2006-01-17T23:32:29	plmmur	thank you
15	2006-01-18T15:19:00	plmmur	Thanks for making the hotel arrangements !!!
16	2006-01-20T16:36:11	plmmur	Hey Jenny are you there?
17	2006-01-23T15:53:16	plmmur	good morninh

16	2006-01-17T20:50:46	Jennifer Bryan	Ya, I caught that... good recovery. Can you send me the file for the catalog? Patrick and I are going to use it as a base for the new Lockwood catalog. I have and use Quark if it was created in that program. Just the stock catalog.
17	2006-01-17T20:53:17	giselacasarin	ok, i have to find it in our files and ill send u ... no problem... i dont remember which program we use, but i guess its quark... but i wont forget....ui will tell me one day... hahahaha
18	2006-01-17T20:53:49	Jennifer Bryan	Someday.....haha Thanks for your help.
19	2006-01-17T20:54:03	giselacasarin	ty (F)
20	2006-01-18T20:30:19	giselacasarin	(#) Hello !!!
21	2006-01-18T20:30:55	giselacasarin	i sent you some catalogues today via Fedex - i guess you might be receiving them in a couple of days
22	2006-01-18T20:31:00	Jennifer Bryan	Hey.... Got your FedEx notice. Thanks for putting some items together.
23	2006-01-18T20:31:34	giselacasarin	oh it worked than !! great
24	2006-01-18T20:31:50	Jennifer Bryan	Are you and Mario planning on the Germany show again this year?
25	2006-01-18T20:32:45	giselacasarin	i didnt talk to mario about germany yet.... but i guess so , it was a very nice show to us !
26	2006-01-18T20:33:21	Jennifer Bryan	Thats what Patrick said. I haven't been to that one, but I plan on it this year. What is the name of it?
27	2006-01-18T20:33:47	giselacasarin	its iba
28	2006-01-18T20:34:01	giselacasarin	ill try to find the site... just a sec
29	2006-01-18T20:34:07	Jennifer Bryan	Thanks.
30	2006-01-18T20:35:39	Jennifer Bryan	I also am planning to visit your plant. I would like to come when some good custom jobs are running to see them in action. I was going to talk to Mario this weekend to see when a good time might be.
31	2006-01-18T20:36:22	giselacasarin	it would be great !!
32	2006-01-18T20:37:09	giselacasarin	http://www.traveltradeint.com/ibadusseldorf.html
33	2006-01-18T20:38:10	Jennifer Bryan	Thanks for the ste. I will check it out and catch up with you later. Ta Ta
34	2006-01-18T20:38:28	giselacasarin	http://www.biztradeshows.com/trade-events/iba-munich.html
35	2006-01-18T20:41:48	giselacasarin	(F)
36	2006-01-23T20:01:30	giselacasarin	http://www.smartftp.com/download/
37	2006-01-23T20:01:37	giselacasarin	(#) Hi !!
38	2006-01-23T20:02:07	giselacasarin	I opened a directory in my server for u , but ill need a ftp program
39	2006-01-23T20:02:12	giselacasarin	null
40	2006-01-23T20:02:29	Jennifer Bryan	Hey there. Did you happen to get the Quark catalog in the PC version instead of Mac?
41	2006-01-23T20:03:40	giselacasarin	im working on it since last week. the version mario has in here is for mac

85	2006-02-08T16:35:22	Jennifer Bryan	Hopefully prices will be worth adding these items and the few new ones Carol and I added.
86	2006-02-08T17:03:46	plmmur	sorry you have been kind of neglected the last few days. Sorry I have been busy putting out fires. I anticipate sending you the list to prioritize later today.
87	2006-02-08T17:22:55	Jennifer Bryan	Sounds good. Once I have the final part numbers I can also start wrapping up the PL and catalog. The upgrade for Quark 6.0 is very expensive, so I just asked Gisela to FedEx me the file and I will have my local person make the changes and turn it into a Lockwood version for us. I used the a lot at CM and they are 1/2 the cost of any other media desinger I have used.
88	2006-02-08T17:24:02	Jennifer Bryan	Can you let me know when I should be getting ready to receive the first shipment of inventory from you? I know you had many of the items in stock already, but I think you needed boxes. I want to give the warehouse a heads up.
89	2006-02-08T17:24:35	plmmur	ok
90	2006-02-08T17:32:45	Jennifer Bryan	Oh, and yes, I have felt very neglected.... hahaha
91	2006-02-08T17:35:22	plmmur	Have you been in contact with any customers?
92	2006-02-08T17:38:32	Jennifer Bryan	A couple, but my fear was that we wouldn't be ready and that is exactly what happened with Richards. She sent me that quote, which I gave pricing for but still am not able to give her lead-times or freight estimates. She needs those because she deals mostly with export. I am compiling the lists of customers I plan to contact in person and by mail, but I want to wait a bit until we have a handle on a complete stock line in inventory. Do you agree?
93	2006-02-08T17:45:07	Jennifer Bryan	I have many things I am working on now to keep me busy until we are ready to sell. Once all this is wrapped up and we are closer to being ready to sell, I will send the mailing out and hit the road calling on the accounts we agreed to target first. We need an accurate lead-time from Mario once he reviews the PO's so I can finalize the sales and marketing timeline.
94	2006-02-08T18:36:40	plmmur	are you there?
95	2006-02-08T21:48:40	Jennifer Bryan	Had to run to the post office and a few errands, what's up?
96	2006-02-08T22:38:27	Jennifer Bryan	Signing off, sorry I didn't have my Skype logged back in earlier. I will chat with you in the morning.
97	2006-02-09T19:58:47	plmmur	helo?
98	2006-02-10T13:08:34	Jennifer Bryan	Morning Pat. I was down with the flu yesterday, sorry I was unavailable. Feeling a bit better today and I will be online all day if you need me. Thanks.
99	2006-02-11T00:06:08	plmmur	r u on
100	2006-02-13T16:06:44	plmmur	can you talk now
101	2006-02-13T16:10:58	Jennifer Bryan	yep
102	2006-02-13T16:32:12	plmmur	Jenny can you talk now
			FYI The local graphic desinger that will be making the catalog changes with me is B2 Design Inc., Mindy Brown. I have used

			the first page?
195	2006-04-05T20:45:10	Jennifer Bryan	I had same problem... but be technical difficulties...
196	2006-04-12T13:57:38	plmmur	How are you doing?.
197	2006-04-12T14:45:56	Jennifer Bryan	Doing good. How about yourself? I am giving Janice and Morris a shout this morning to see how the inventory is coming for the first shipment. Trade show booth rental looks really outrageous, I think we should probably have Morris or John come out for setup and teardown and use the Lockwood booth. Thoughts?
198	2006-04-12T16:35:49	Jennifer Bryan	I started contacting customers this week and will be making appointments during the NRA Show. I will keep you posted regarding the initial feedback I get.
199	2006-04-13T17:14:18	Jennifer Bryan	I would like to quote \$16.80 for 5,000 #10205 cookie sheets bulk packed, no cartons. I do not know our cost, but this is around what CM was getting... thoughts?
200	2006-04-13T18:20:29	plmmur	how serious is this request?
201	2006-04-13T18:23:17	Jennifer Bryan	Serious. They have been buying these from CM for years and we have a chance to quote on the business. I quoted \$16.80, which is 10+5 off of new pricelist. I will let you know what happens when they get the sample Sharon is sending out today.
202	2006-04-13T18:24:05	plmmur	can I call you?
203	2006-04-13T18:44:07	plmmur	we have 1500 available I will quote the 3500 ok
204	2006-04-13T19:06:59	plmmur	Morris left a message for you yesterday please call him now 416-617-9240
205	2006-04-13T19:07:29	Jennifer Bryan	ok
206	2006-04-20T14:22:13	plmmur	Can you please call me when you get a second. Thanks Pat
207	2006-04-20T16:25:18	Jennifer Bryan	Pulled the history and pulled all of the other items from their website we can also quote on. I will call them this afternoon once I have reviewed everything. They are headquartered in TX, but purchasing is in GA. CM sold they alot of 16 ga sheet pans and other items for the Publix account, but I am not sure if they lost that. I will copy you this afternoon.
208	2006-04-21T14:39:51	Jennifer Bryan	Where can I find all of the pictures used for the last catalog? Checked FTP and having trouble locating...
209	2006-04-21T14:40:21	plmmur	Mario's or Lockwood?
210	2006-04-21T14:40:31	Jennifer Bryan	Lockwoods
211	2006-04-21T14:40:59	plmmur	was it not part of the info you pulled from Marta's computer
212	2006-04-21T14:41:48	Jennifer Bryan	I will double check.....
213	2006-05-02T14:21:16	plmmur	when do you expect to have a proof of the catalogue?
214	2006-05-02T14:21:57	Jennifer Bryan	We are working like crazy for me to have it by Friday
		Jennifer	Pictures are being loaded that she need and I am strill loading all the additions/deletions into the draft she created by combiining Lockwood/Cainco catalogs together. If she cant' get it done by Friday, I will cancel coming out to see the booth assembly and

124	2006-04-03T13:40:48	Bryan	Address?
125	2006-04-03T13:42:55	giselacasarini	86 Turner Loop Road Humboldt, TN 38343 USA
126	2006-04-03T13:43:13	Jennifer Bryan	Thank you!!!
127	2006-04-03T13:43:19	giselacasarini)
128	2006-05-11T16:48:48	Jennifer Bryan	Hi Gisela..... Need you urgent help if possible. We are finishing up the new catalog and need a couple of pictures from the blue Cainco catalog. You you email me the pictures files (.jpg???) of the following in groups or individual that you have on file.... Single Pullman pans and/or with lid, 3-on pullmans and lid, rye bread 14010, hot dog and hamburger pans and cluster pans, and the 3 sheet/bun pans from last page. I know I am a pain in the butt, but we are trying to wrap this up today !!!!!!! Thank you, thank you, thank you for any help.
129	2006-05-11T17:43:20	giselacasarini	will find them in here and send u asap
130	2006-05-11T17:46:26	Jennifer Bryan	You are the bomb..... please send via email if you find something. THANKS!
131	2006-05-11T21:13:15	giselacasarini	did u get them ???
132	2006-05-11T21:13:58	Jennifer Bryan	Yep.... thanks
133	2006-05-11T21:18:57	giselacasarini	please, let me know if i send all u wanted
134	2006-05-11T21:20:54	giselacasarini	sent...
135	2006-05-11T21:21:25	Jennifer Bryan	I forwarded it to my designer.... I will let you know. Thanks Gisela
136	2006-05-11T21:22:18	giselacasarini	sorry about the delay...
137	2006-05-11T21:23:58	Jennifer Bryan	What delay? Thanks for the help
138	2006-06-01T15:43:09	Jennifer Bryan	Hi Gisela... hope all is well. If you have info, can you please email me the info for teh IBA Show in Germany. I plan on attending and I want to make sure I am included in hotel reservations, exhibitor badge, and travel dates. Thanks so much for your help.
139	2006-06-01T17:03:07	giselacasarini	i am now looking for hotel reservations would you like me to see if i can put u together with us at the same hotel ??
140	2006-06-01T17:03:19	giselacasarini	i will forward things i have ...
141	2006-06-01T20:27:40	Jennifer Bryan	Yes about the same hotel.... thanks Gisela
142	2006-06-01T20:29:44	giselacasarini	when r u pretending to go ?? we might be going at 09/30... the show begins at 10/03
143	2006-06-01T20:59:35	giselacasarini	http://www.iba.de/index.cms?FQT=EN.iba.Start
144	2006-06-02T17:47:21	giselacasarini	hi jenny !!!
145	2006-06-02T17:47:53	giselacasarini	in germany, wht kind of acomodation would u want ?? single, double ???
146	2006-06-02T17:48:03	giselacasarini	the hotel probably will be http://www.regent-hotelmunich.com/

		Bryan	job to pay for the tools?
348	2006-06-21T22:05:00	plmmur	no
349	2006-06-22T15:16:36	Jennifer Bryan	ok
350	2006-06-23T19:22:12	plmmur	What's new?
351	2006-06-23T19:37:52	Jennifer Bryan	Hey there.... Still waiting for the last catalog proof to come back. Morris and I made a couple more changes. I am going through all of the CM stock customer sales data and looking up each customer on the internet to add them to our mailing list. I had item history and customer name, but no addresses. Time consuming, but I want to make sure we hit all of them when we do our mailing. The Multigrains order for 2,500 5-Groove baguettes is looking good and we should be getting an order today or Monday from Bake n Joy for 84 muffin pans from the Ringwood warehouse. I just need to get this catalog in hand and things should start jumping....
352	2006-06-23T19:39:38	Jennifer Bryan	Anything interesting happening over there with Nat or APC in the custom world? Let me know if I can help with any sales history.
353	2006-06-23T19:46:04	plmmur	can you talk?
354	2006-06-26T14:20:11	plmmur	I was looking through the final draft and noticed the Mini Cake Frames there should be a colum for arrangement
355	2006-06-26T14:21:09	Jennifer Bryan	Ok, I will check it out
356	2006-06-26T14:22:12	Jennifer Bryan	Shoot me an email when you are done and I will have corrections made with anything Morris has...thanks
357	2006-06-26T16:14:33	plmmur	Jennifer did you understand my point about the arrangement " not being there" in the catalogue
358	2006-06-26T16:14:52	plmmur	I think we need to add it before going to print
359	2006-06-26T16:15:22	Jennifer Bryan	Yep, I got it.
360	2006-06-26T16:16:24	Jennifer Bryan	Morris had one small change along with yours, so I will have those corrected and send off to the printer.
361	2006-06-26T18:35:26	plmmur	any luck on the 2500 baguette order?
362	2006-06-27T15:06:31	plmmur	Multi Grains check came in today
363	2006-06-27T15:06:40	plmmur	Who Ho
364	2006-06-27T20:15:53	plmmur	r u around
365	2006-06-28T20:40:32	plmmur	20 Gauge Aluminized Steel Cluster 6 Hamburger Roll Pans 5/8" Steel Band In Rim Mould Specifications Top Inside: 3-3/4" Bottom Outside: 3-5/8" Depth: 3/4" Including Convex (5/8" + 1/8") Arrangement: 4 Clusters of 6 Overall Dimensions: 17-1/4" x 24-1/4" Features: Moulds and Pans Drawn Seamless Anticlimb Rims 2" Corner Radius
366	2006-06-28T20:40:53	Jennifer Bryan	Did you get my email?
367	2006-06-28T20:41:14	plmmur	yes are any of the specs the same as what I just skyped to you
368	2006-06-28T20:41:25	Jennifer Bryan	Let me check...
369	2006-06-28T20:46:41	Jennifer Bryan	see email

EXHIBIT 3

Patrick Murray

July 17, 2007

<p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO WESTERN DIVISION</p> <p>American Pan Company, : Plaintiff, : vs. : Case No. 3:06 CV 0197 Lockwood : Judge Thomas M. Rose Manufacturing, Inc., : Defendant. :</p> <p style="text-align: center;">VIDEOTAPED DEPOSITION OF PATRICK MURRAY</p> <p style="text-align: center;">Taken at Bricker & Eckler LLP 100 South Third Street Columbus, OH 43215 July 17, 2007, 10:05 a.m.</p> <p style="text-align: center;">Spectrum Reporting LLC 333 Stewart Avenue, Columbus, Ohio 43206 614-444-1000 or 800-635-9071 www.spectrumreporting.com</p>	<p style="text-align: center;">1</p> <p>1 Tuesday Morning Session 2 July 17, 2007, 10:05 a.m. 3 4 S T I P U L A T I O N S 5 6 It is stipulated by counsel in attendance that 7 the deposition of Patrick Murray, a witness 8 herein, called by the Plaintiff for 9 cross-examination, may be taken at this time by 10 the notary pursuant to notice and subsequent 11 agreement of counsel that said deposition may be 12 reduced to writing in stenotypy by the notary, 13 whose notes may thereafter be transcribed out of 14 the presence of the witness; that proof of the 15 official character and qualification of the notary 16 is waived. 17 18 19 20 21 22 23 24</p>
<p style="text-align: center;">2</p> <p>1 A P P E A R A N C E S 2 3 ON BEHALF OF PLAINTIFF: 4 Bailey Cavaliere 5 10 West Broad Street, 21st Floor 6 Columbus, OH 43215 7 By W. Evan Price, II, Esq. 8 Robert R. Dunn, Esq. 9 R. Clifton Gibbs, Esq. 10 11 ON BEHALF OF DEFENDANT: 12 Mueller, Smith & Matto 13 7700 Rivers Edge Drive 14 Columbus, OH 43235-1355 15 By Edward A. Matto, Esq. 16 and 17 Bricker & Eckler LLP 18 100 South Third Street 19 Columbus, OH 43215 20 By James P. Schuck, Esq. 21 22 ALSO PRESENT: 23 Videographer - Jeremy Dineen 24 Gilbert Bundy</p>	<p style="text-align: center;">4</p> <p>1 I N D E X 2 Examination By Page 3 Mr. Price - Cross 6 4 5 6 Plaintiff's Exhibits Page 7 1 - ABC Restaurant 7 8 2 - Agreement, 8-6-93 45 9 3 - Sales Agency Agreement 45 10 4 - Lockwood website 36 11 5 - Lockwood invoices 107 12 6 - Invoices 131 13 14 15 16 17 18 19 20 21 22 23 (Exhibits attached to original transcript.) 24</p>

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<p>21</p> <p>1 on Ms. Bryan's computer? Is that one of them?</p> <p>2 A. Three.</p> <p>3 Q. Okay. Presumably there may be copies</p> <p>4 related to the e-mails you received on your</p> <p>5 computer?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Apart from those, you also have</p> <p>8 two sets that have been printed out?</p> <p>9 A. I'm referring to electronic copies.</p> <p>10 Q. Okay. So you have two electronic</p> <p>11 copies on your computer, Ms. Bryan's computer.</p> <p>12 Where is the third copy?</p> <p>13 A. Janice Cassidy.</p> <p>14 Q. Okay. Are there any hard copies?</p> <p>15 A. Not to my knowledge.</p> <p>16 Q. Okay. Since she was hired by Lockwood,</p> <p>17 has Ms. Bryan used the Chicago Metallic documents</p> <p>18 as part of her work for Lockwood Manufacturing?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. What do you understand that she</p> <p>21 has used those documents for in the course and</p> <p>22 scope of her employment at Lockwood?</p> <p>23 A. She gave us a rough idea of what the</p> <p>24 prices are being used in the U.S.</p>	<p>23</p> <p>1 Ms. Bryan and Ms. Cassidy, has anyone else at</p> <p>2 Lockwood Manufacturing used or reviewed the</p> <p>3 Chicago Metallic documents?</p> <p>4 A. No.</p> <p>5 Q. Okay. Is it your position that</p> <p>6 Lockwood Manufacturing is entitled to retain the</p> <p>7 Chicago Metallic documents it received from</p> <p>8 Ms. Bryan?</p> <p>9 MR. MATTO: Objection to the extent</p> <p>10 you're asking for a legal conclusion.</p> <p>11 MR. PRICE: Yeah. I'm not asking for a</p> <p>12 legal conclusion. I'm just asking what his --</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Can you explain to me why you</p> <p>15 believe Lockwood Manufacturing is entitled to</p> <p>16 retain those records?</p> <p>17 A. I didn't pay for them. I didn't</p> <p>18 request them. They were offered to me.</p> <p>19 Q. Okay.</p> <p>20 A. I'm not using them for any illegal</p> <p>21 purpose. So there's no reason -- and the laptop</p> <p>22 was given to Jenny Bryan by the owner of Chicago</p> <p>23 Metallic prior to the sale completing.</p> <p>24 Q. Okay. And that was Mr. Barton?</p>
<p>22</p> <p>1 Q. Okay. And at that point, were you</p> <p>2 seeking to expand your market into the United</p> <p>3 States?</p> <p>4 A. We were interested in expanding our</p> <p>5 market in the U.S. prior to hiring Jenny Bryan.</p> <p>6 Q. Okay. But as -- prior to hiring her,</p> <p>7 but it was after she was hired you were still</p> <p>8 interested in doing so, correct?</p> <p>9 A. Correct.</p> <p>10 Q. And so she shared with you pricing</p> <p>11 information using the Chicago Metallic documents,</p> <p>12 correct?</p> <p>13 A. Correct.</p> <p>14 Q. Did she also use them to generate</p> <p>15 potential customer leads?</p> <p>16 A. No.</p> <p>17 Q. Do you know what else she has used them</p> <p>18 for in the course and scope of her employment at</p> <p>19 Lockwood?</p> <p>20 A. No.</p> <p>21 Q. Have you discussed with her what she</p> <p>22 has used them for?</p> <p>23 A. No.</p> <p>24 Q. Okay. Apart from yourself and</p>	<p>24</p> <p>1 A. Correct.</p> <p>2 Q. And to your knowledge, or based on what</p> <p>3 Ms. Bryan has told you, was Mr. Barton aware that</p> <p>4 all of this information was on the laptop when he</p> <p>5 gave it to her?</p> <p>6 A. I don't know what Mr. Barton was aware</p> <p>7 of.</p> <p>8 Q. Okay. Well, I'm asking what Ms. Bryan</p> <p>9 told you.</p> <p>10 A. She inferred that Mr. Barton was aware</p> <p>11 of it.</p> <p>12 Q. Okay. Mr. Murray, did you review any</p> <p>13 documents in preparation for your deposition here</p> <p>14 today?</p> <p>15 A. Yes.</p> <p>16 Q. What did you review?</p> <p>17 MR. MATTO: I'm going to object to the</p> <p>18 extent -- are you asking outside the scope of</p> <p>19 meeting with us?</p> <p>20 MR. PRICE: Yeah.</p> <p>21 MR. MATTO: Okay.</p> <p>22 MR. PRICE: If he reviewed any</p> <p>23 documents.</p> <p>24 MR. MATTO: Outside -- yeah. I'm going</p>

Patrick Murray

July 17, 2007

<p style="text-align: right;">125</p> <p>1 A. No.</p> <p>2 Q. Now, you said Cainco was never your</p> <p>3 primary supplier, correct?</p> <p>4 A. We bought from both companies.</p> <p>5 Q. From both Cainco and American Pan?</p> <p>6 A. And Premier Pan.</p> <p>7 Q. And Premier Pan. But once you</p> <p>8 terminated the agreement with American Pan, did</p> <p>9 Cainco then become your primary supplier?</p> <p>10 A. Yes.</p> <p>11 Q. Do you have any -- apart from issuing</p> <p>12 purchase orders and everything else, do you have</p> <p>13 any more extended relationship or contractual</p> <p>14 relationship with Cainco?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What is that relationship?</p> <p>17 A. Shareholder.</p> <p>18 Q. You are a shareholder in Cainco</p> <p>19 personally?</p> <p>20 A. Lockwood.</p> <p>21 Q. Or Lockwood is.</p> <p>22 When did Lockwood become a shareholder</p> <p>23 in Cainco?</p> <p>24 A. May 2005.</p>	<p style="text-align: right;">127</p> <p>1 with Mario. Specifically, I don't remember it.</p> <p>2 But probably I offered, "Would you be willing to</p> <p>3 sell some shares in your company?"</p> <p>4 Q. Or "I'd be interested in investing in</p> <p>5 it"?</p> <p>6 A. Something along those lines, I would</p> <p>7 imagine.</p> <p>8 Q. Okay. And when did -- when was that</p> <p>9 subject first raised of the potential of Lockwood</p> <p>10 investing in Cainco?</p> <p>11 A. October of 2003.</p> <p>12 Q. Of '03?</p> <p>13 A. Correct.</p> <p>14 Q. Okay. What percentage of Cainco did</p> <p>15 Lockwood acquire in May of 2005?</p> <p>16 A. 50 percent.</p> <p>17 Q. 50 percent.</p> <p>18 A. Excuse me.</p> <p>19 Q. Is there a contractual relationship</p> <p>20 between Cainco and Lockwood, sort of a rep</p> <p>21 agreement or any kind of a master agreement that</p> <p>22 governs the party's sale, or is it just purchase</p> <p>23 order by purchase order?</p> <p>24 A. I don't really remember.</p>
<p style="text-align: right;">126</p> <p>1 Q. How did that come about? How did that</p> <p>2 wind up happening? What were the circumstances</p> <p>3 that led to Lockwood deciding to purchase shares</p> <p>4 in Cainco?</p> <p>5 A. I don't understand the question. Was</p> <p>6 it why did Lockwood do it?</p> <p>7 Q. Yeah.</p> <p>8 A. To have some control over our supply.</p> <p>9 Q. Okay. Let me ask you this: Did</p> <p>10 Lockwood just buy the shares on an exchange, on a</p> <p>11 publically traded exchange, like call up a broker?</p> <p>12 A. No.</p> <p>13 Q. Did you purchase -- did Lockwood</p> <p>14 purchase the shares directly from Cainco?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. How did Lockwood learn that the</p> <p>17 shares were available for purchase?</p> <p>18 A. I spoke to him.</p> <p>19 Q. Okay.</p> <p>20 A. I spoke to Mario Casarin.</p> <p>21 Q. Okay. Could you tell me how that</p> <p>22 conversation went?</p> <p>23 A. I don't really remember it</p> <p>24 specifically. I've had a lot of conversations</p>	<p style="text-align: right;">128</p> <p>1 Q. You don't remember?</p> <p>2 A. I'd have to review it.</p> <p>3 Q. Do you know if there is any contract,</p> <p>4 apart from purchase orders and individual</p> <p>5 transactions, you're not sure whether there is any</p> <p>6 kind of contract between Cainco and Lockwood?</p> <p>7 A. I'm not sure of its contents. There's</p> <p>8 a lot of paper.</p> <p>9 Q. I didn't -- I didn't ask about</p> <p>10 contents. I was just asking --</p> <p>11 A. There would be some agreement.</p> <p>12 Q. Agreement?</p> <p>13 A. Of some form.</p> <p>14 Q. Okay. Is it a rep agreement? I mean,</p> <p>15 is -- is Lockwood the representative for Cainco?</p> <p>16 A. No. I -- not that I remember, no.</p> <p>17 Q. Is there any particular territory</p> <p>18 within which you are allowed to sell Cainco</p> <p>19 products?</p> <p>20 A. Well, Canada.</p> <p>21 Q. Okay.</p> <p>22 A. Northeast and the northwest.</p> <p>23 Q. Of the United States?</p> <p>24 A. Correct.</p>

1 State of Ohio : C E R T I F I C A T E

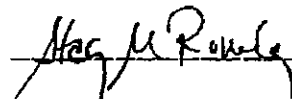
2 County of Franklin: SS

3 I, Stacy M. Rowley, a Notary Public in and for
4 the State of Ohio, certify that Patrick Murray was
5 by me duly sworn to testify to the whole truth in
6 the cause aforesaid; testimony then given was
7 reduced to stenotype in the presence of said
8 witness, afterwards transcribed by me; the
9 foregoing is a true record of the testimony so
10 given; and this deposition was taken at the time
11 and place specified on the title page.

12 Pursuant to Rule 30(e) of the Fed. R. Civ. P.,
13 the witness and/or the parties have not waived
14 review of the deposition transcript.

15 I certify I am not a relative, employee,
16 attorney or counsel of any of the parties hereto,
17 and further I am not a relative or employee of any
18 attorney or counsel employed by the parties hereto,
19 or financially interested in the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand
21 and affixed my seal of office at Columbus, Ohio, on
22 July 20, 2007.

23 

24 Stacy M. Rowley, RPR, Notary Public - State of Ohio
My commission expires August 6, 2011.

EXHIBIT 4

LEXSEE 2005 U.S. DIST. LEXIS 32798

FAIP NORTH AMERICA, INC., Plaintiff, vs. SISTEMA s.r.l., et al., Defendants.

05 C 4002

**UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
ILLINOIS, EASTERN DIVISION**

2005 U.S. Dist. LEXIS 32798

**December 14, 2005, Decided
December 14, 2005, Filed**

COUNSEL: [*1] For Faip North America, Inc., Plaintiff: Dennis R. Schlemmer, Aaron Ross Feigelson, Christine M Cochran, David M. Airan, Leydig, Voit & Mayer, Ltd., Chicago, IL.

For Sistema s.r.l. an Italian corporation, Sistema USA, Inc. an Indiana corporation, Gokalp Onay an individual, John Tobinski an individual, Defendants: James R. Pittacora, Pittacora & Crotty, LLC, Chicago, IL; Bernard Francis Crotty, Pittacora & Crotty, LLC, Markham, IL.

JUDGES: CHARLES P. KOCORAS, Chief District Judge.

OPINION BY: Charles P Kocoras

OPINION

MEMORANDUM OPINION

CHARLES P. KOCORAS, Chief District Judge:

The following matter comes before the court on Defendants', Sistema s.r.l. ("Sistema"), Sistema USA, Inc. ("USA"), Gokalp Onay ("Onay"), and John Tobinski ("Tobinski"), (collectively referred to as "Defendants"), Motion to Dismiss Plaintiff's, FAIP North America, Inc. ("FAIP"), amended complaint pursuant to Fed. R. Civ. P. 12(b)(2) and (6). For the reasons set forth in the opinion below, Defendants' Motion is denied.

BACKGROUND

FAIP is an Illinois corporation with its principal place of business in Elk Grove, Illinois. Sistema is an Italian corporation [*2] with its principal place of business in Villafranca di Verona, Italy. USA is an Indiana corporation with its principal place of business in Evansville, Indiana. Onay is a resident of Newburgh, Indiana,

and Tobinski is a resident of Evansville, Indiana. We assume the truth of the following facts for the purposes of this Motion.

FAIP, Sistema, and USA are in the business of developing, manufacturing, selling, and distributing electric pressure washers, pumps, and high pressure hoses. USA's pressure washers are manufactured, at least in part, by its parent entity, Sistema. Sistema's website advertises USA as its North American branch for selling pressure washers.

An important part of FAIP's business includes the development of trade secrets and other proprietary confidential information related to its products. This confidential information includes, but is not limited to, the machines, tools, and appliances used in FAIP's products; the methods and processes of producing such products; the products' specifications; the methods and results of FAIP's research efforts; and FAIP's marketing and financial information, which includes actual and potential customer lists and cost and profit [*3] information. In order to keep their confidential information secret, FAIP requires all of its employees to sign confidentiality agreements. When employment is terminated, FAIP conducts exit interviews wherein former employees are reminded of their confidentiality obligations. In addition, all of FAIP's computer systems and technical information are password protected. As FAIP employees, Onay and Tobinski had access to a majority of FAIP's confidential information and were required to sign the requisite confidentiality agreements.

According to FAIP, Onay left on poor terms and violated his confidentiality agreement when he went to work for USA. Onay allegedly left FAIP after attempting to undermine a business deal between FAIP and one of its suppliers. FAIP asserts that Sistema induced USA to hire Onay because he had knowledge regarding FAIP's confidential information. FAIP alleges Onay disclosed

the confidential information and began, or at least tried, to sell Sistema washers to potential FAIP customers. FAIP specifically alleges that Onay used his knowledge of FAIP's customers and pressure washer pricing in an attempt to outbid a business deal with Home Depot. In essence, FAIP believes [*4] that Onay is directly assisting the Sistema Defendants, by way of his knowledge of FAIP's confidential information, to compete against it in the North American pressure washer market.

FAIP also believes that the Sistema Defendants recruited and employed Tobinski because of his knowledge of FAIP's confidential information. Tobinski remained a FAIP employee until August, 2003 and also had access to its confidential information. While so employed, Tobinski allegedly remained in contact with Onay and provided him with confidential information regarding FAIP's business opportunities and pressure washer products and programs. FAIP contends that from February 1999 to August 2003, Tobinski violated his Conflict of Interest Agreement by providing this confidential information to Onay and the Sistema Defendants. As with Onay, once Tobinski became a USA employee, FAIP asserts that he shared additional confidential information with one or both of the Sistema Defendants. Specifically, FAIP submits that Tobinski used a false password to log-in to FAIP's computer system and, without FAIP's authorization, allegedly accessed an email account and other confidential data.

On September 9, 2005, FAIP [*5] initiated this suit against the Defendants, and on September 19, 2005, filed a nine-count amended complaint alleging: (1) violation of the Computer Fraud and Abuse Act; (2) violation of the Stored Communications Act; (3) misappropriation of trade secrets; (4) unfair competition; (5) breach of contract by Onay; (6) breach of contract by Tobinski; (7) tortious interference with contract; (8) breach of fiduciary duty; and (9) inducement of breach of fiduciary duty. Defendants bring the instant Motion to Dismiss the amended complaint, or portions thereof, on the basis that: (1) FAIP fails to establish personal jurisdiction over Sistema; and (2) the Illinois Trade Secret Act ("ITSA") bars Counts IV, VII, VIII, and IX.

LEGAL STANDARDS

A. Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(2)

Fed. R. Civ. P. 12(b)(2) governs motions to dismiss based upon lack of personal jurisdiction. Under this rule, the burden of proof rests upon the party asserting jurisdiction; however, this party is only required to make a *prima facie* showing that jurisdiction exists. See *Saylor v. Dyniewski*, 836 F.2d 341, 341 (7th Cir. 1988). [*6] In a motion to dismiss based upon lack of personal jurisdiction,

the court must accept all well-pleaded facts within the complaint as true, resolve all factual disputes in favor of the party asserting jurisdiction, and draw any reasonable inferences from those facts in the asserting parties favor. *Dawson v. General Motors Corp.*, 977 F.2d 369, 372 (7th Cir. 1992).

B. Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6)

When considering a 12(b)(6) motion to dismiss, a court evaluates the legal sufficiency of a plaintiff's complaint, not the merits. *Gibson v. City of Chi.*, 910 F.2d 1510, 1520 (7th Cir. 1990). We must accept all well-pleaded allegations as true and will not dismiss a case for failure to state a claim unless the plaintiff cannot prove any facts sufficient to support his claim. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). All inferences are to be drawn in a light most favorable to the plaintiff. *Jackson v. E.J. Branch Corp.*, 176 F.3d 971, 978 (7th Cir. 1999). To survive a motion to dismiss, a plaintiff need only provide a "short and plain statement" [*7] under Rule 8(a)(2); the particulars of the claim are not required. *Midwest Gas Servs. v. Ind. Gas. Co.*, 317 F.3d 703, 710 (7th Cir. 2002). Nonetheless, to withstand a motion to dismiss, a complaint must allege facts that set forth the essential elements of the cause of action. *Doherty v. City of Chi.*, 75 F.3d 318, 326 (7th Cir. 1996).

DISCUSSION

A. 12(b)(2) - Personal Jurisdiction

When a case comes before a court on the basis of diversity jurisdiction, a federal district court in Illinois may exercise personal jurisdiction over a nonresident defendant only if an Illinois state court would have jurisdiction. See *RAR Inc. v. Turner Diesel, Ltd.*, 107 F.3d 1272, 1275 (7th Cir. 1997); *Dehmlow v. Austin Fireworks*, 963 F.2d 941, 945 (7th Cir. 1992). Under the Illinois long-arm statute, a court may exercise jurisdiction over nonresident defendants for a cause of action arising from acts such as transacting any business within the state, committing a tortious act within the state, or making or performing any contract or promise substantially connected with the state. 735 ILCS 5/2-209(a) [*8]. Furthermore, the statute provides that a court may exercise jurisdiction on any basis permitted by either the Illinois or federal constitutions. 735 ILCS 5/2-209(c). To determine the reach of Illinois due process, courts look to Federal Due Process limits on jurisdiction. *RAR*, 107 F.3d at 1276-1277.

Personal jurisdiction can be either general or specific. General jurisdiction arises when a defendant's activities are continuous and systematic, to the extent that it is proper for a court to exercise jurisdiction over the

party for any action it takes. See *Helicopteros Nacionales de Colombia, SA v. Hall*, 466 U.S. 408, 104 S. Ct 1868, 80 L. Ed. 2d 404 (1984). Specific jurisdiction, by contrast, can be exercised when a suit arises out of or is related to the defendant's contacts with the forum. See *id.* at 414 n.8. We agree with Defendants that we do not have general jurisdiction over Sistema because its contacts in Illinois are not continuous and systematic; however, the determination of specific jurisdiction is more complicated.

FAIP's amended complaint alleges that the Sistema Defendants used Onay and/or Tobinski, as their agent(s), to access confidential [*9] information related to its sales and marketing efforts and its technology. Much of this information is allegedly located in FAIP's computer and email systems in Illinois. FAIP also alleges that, either separately or jointly, the Defendants used this information as a means of unfair competition. Sistema contends that this court does not have specific personal jurisdiction over it for three reasons: 1) the acts allegedly committed by Onay and Tobinski occurred outside of Illinois; 2) it did not purposefully establish minimum contacts with Illinois, and thus the establishment of such jurisdiction would offend traditional notions of fair play and substantial justice; and 3) USA's activities cannot be attributed to it to establish jurisdiction.

We find Sistema's first argument to be without merit because the Seventh Circuit has held that specific jurisdiction lies in the place of injury, even despite the fact that the wrongdoer's actions may have occurred in another state. *Janmark, Inc. v. Reidy*, 132 F.3d 1200, 1202 (7th Cir. 1997). FAIP alleges that Onay, Tobinski, and USA's activities, occurring outside Illinois, resulted in foreseeable damages within Illinois. Therefore, [*10] the fact that Onay and Tobinski's actions occurred outside Illinois is by itself not a bar to specific personal jurisdiction.

Next, Sistema argues that even if we find "minimum contacts" to exist, asserting personal jurisdiction over it would violate traditional notions of fair play and substantial justice. We believe the opposite to be true. If we agreed with Sistema, it would set a precedent that foreign companies can "reap the benefits and advantages of doing business directly while insulating themselves from lawsuits by using separate subsidiaries and distribution networks to implement their business activity." *Japax, Inc. v. Sodick Co.*, 186 Ill. App. 3d at 665, 542 N.E.2d 792, 134 Ill. Dec. 446 (1989). Accordingly, we believe the threshold issue, raised by Defendant's third argument, is whether or not the alleged wrongdoings of USA can be attributed to Sistema to establish specific personal jurisdiction.

Generally, "the parent-subsidiary relationship is insufficient to confer personal jurisdiction." *Integrated Business Information Service, Ltd. v. Dun & Bradstreet Corp.*, 714 F. Supp. 296, 299 (N.D. Ill. 1989). However, because parent companies necessarily exercise some control over their wholly owned subsidiaries, there must [*11] be some "basis for piercing the corporate veil and thus attributing the subsidiaries' torts to the parent." *IDS Life Ins. Co. v. America Life Ins. Co.*, 136 F.3d 537, 540 (7th Cir. 1998). Personal jurisdiction is not established where "corporate formalities are substantially observed and the parent does not exercise an unusually high degree of control over the subsidiary." *Central States S.E. and S.W. Areas Pension Fund v. Reimer Express World Corp.*, 230 F.3d 934, 944 (7th Cir. 2000). Although control is a requisite to establish specific personal jurisdiction, *total control is not*. (emphasis added) *Liberty Mut. Fire Ins. Co. v. Reimer Express Enters.*, 82 F. Supp. 2d 887, 890 (N.D. Ill. 2000); See *Japax, Inc. v. Sodick Co. Ltd.*, 186 Ill. App. 3d 656, 542 N.E.2d 792, 797, 134 Ill. Dec. 446 (1989).

In *Japax*, the court found specific personal jurisdiction over a foreign company on the plaintiff's allegations that the company indirectly sold and advertised its products in Illinois, loaned employees and money to its Illinois subsidiary, had a distributor agreement with an Illinois corporation, and had a distributor with a sales office in Illinois. 542 N.E.2d at 796. [*12] In *IDS Life Insurance*, the Seventh Circuit recognized that it could also exercise specific personal jurisdiction over a parent company if the subsidiaries were acting as its agents. 136 F.3d at 540. Sistema argues that a subsidiary-parent relationship is alone not enough to establish specific personal jurisdiction. We agree. However, in viewing the disputed facts in a light most favorable to FAIP, it becomes apparent that it has met the *prima facie* burden for establishing specific personal jurisdiction.

FAIP contends that Sistema is responsible for the actions of USA and its agents because (1) it shares two of the three corporate officers with USA; (2) its own president owns 80% of USA's stock; (3) its president routinely travels to the United States for trade shows; (3) it relies on USA to perform functions it would normally perform as indicated by Onay's role in the Home Depot bidding incident; (4) it allegedly negotiates and sets the prices for such transactions and for its products; (5) it allows USA to act as a guarantor in warranty servicing and product support agreements for its products; (6) Sistema's website advertises USA as its North American branch; [*13] and (7) it executes agreements or provides assurances that USA will perform as promised because USA does not have the sufficient corporate history to satisfy the demands of major retailers. Contrary to the alleged relationship put forth by FAIP, Sistema argues

that specific personal jurisdiction does not exist because the entities maintain separate corporate formalities. As previously noted, Sistema's complete reliance upon corporate formalities is not dispositive.

In *Central States*, the Seventh Circuit indicated that Illinois courts can exercise jurisdiction over parent corporations "where all the corporate formalities are observed but the subsidiary's only purpose is to conduct the business of the parent." 230 F.3d at 940. Consequently, Sistema's argument is nullified and the alleged facts FAIP puts forth support a reasonable inference that USA's only purpose is to conduct Sistema business and, therefore, FAIP has met its burden of establishing a *prima facie* case for specific personal jurisdiction. Accordingly, Defendant's Rule 12(b)(2) Motion is denied.

(B) 12(b)(6) - ITSA Preemption Claims

Defendants next contend that Counts IV (Unfair Competition), [*14] VII (Tortious Interference with Contract), VIII (Breach of Fiduciary Duty) and IX (Inducement of Breach of Fiduciary Duty) (collectively referred to as "contested counts") of FAIP's amended complaint are barred by the ITSA. In pertinent part, the ITSA provides:

(a) except as provided in subsection (b) this act is intended to displace conflicting tort, restitutionary, unfair competition, and other laws of this State providing civil remedies for *misappropriation of a trade secret*.

(b) This Act does not affect:

(2) other civil remedies that are not based upon misappropriation of a trade secret . . .

(Emphasis added) 765 ILCS 1065/8(a).

The Seventh Circuit has recognized that Illinois' passage of the ITSA has resulted in the abolishment of "all common law theories of misuse of [trade secret] information." *Composite Marine Propellers, Inc. v. Van Der Woude*, 962 F.2d 1263, 1265 (7th Cir. 1992). The ITSA defines trade secret as:

information, including but not limited to, technical or non-technical data, a formula, pattern, compilation, program, device, method, technique, drawing, process, financial data, or list [*15] of actual or potential customers or suppliers, that: (1) is sufficiently secret to derive economic value, actual or potential, from not

being generally known to other persons who can obtain economic value from its disclosure or use; and (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy or confidentiality.

765 ILCS 1065/2(d).

In sum, a defendant is only liable for the misappropriation of a trade secret under the ITSA and not under any other state law. *Thomas & Betts Corp. & Holdings, Inc. v. Panduit Corp. & Wimmer*, 108 F. Supp. 2d 968, 971 (N.D. Ill. 2000).

Defendants contend that the contested counts are solely based upon the misappropriation of trade secrets and are therefore barred by the ITSA. Defendants' arguments rest on the notion that the contested claims cannot be made without reliance on the misappropriation of FAIP's trade secrets alone. In making their arguments Defendants rely heavily upon *Thomas & Betts Corp.*, 108 F. Supp. 2d at 973, and *Thermodyne Food Serv. Prods. v. McDonald's Corp.*, 940 F. Supp. 1300 at 1309 (1996), both of which address motions for summary judgment [*16] where the plaintiffs made various claims alleging misappropriation of confidential information and trade secrets. The *Thomas & Betts Corp.* and *Thermodyne* courts granted summary judgment on portions of the plaintiffs' claims, finding those portions to be solely dependant upon the misappropriation of trade secrets and therefore barred by the ITSA.

Unlike in *Thomas & Betts, Corp.* and *Thermodyne*, we find ourselves addressing a motion to dismiss where fact discovery is still open, instead of a motion for summary judgment where fact discovery is closed. Therefore, in order to assess the present motion to dismiss, we must only consider whether FAIP alleges that each count is based solely upon the misappropriation of trade secrets, or upon wrongdoing of a different sort.

i. Count IV - Unfair Competition

Count IV asserts the Sistema Defendants, either jointly or separately, engaged in unfair competition by using Tobinski's employment with FAIP to "wrongfully appropriate the fruits of [its] investments in connection to the U.S. pressure washer market." FAIP premises Count IV on Sistema and/or USA's use of Tobinski's employment at FAIP to pursue beneficial business [*17] opportunities by way of confidential information he misappropriated and provided them with. Essentially, Defendants contend that the confidential information FAIP bases count IV on was comprised of trade secrets entirely and therefore the count is barred by the ITSA. Although encompassing trade secrets, we believe confidential in-

formation is a broader category of information. We are unwilling to limit the alleged misappropriation of confidential information to merely trade secrets at this juncture. FAIP has yet to directly identify the nature of the alleged misappropriated confidential information, and at this point of the litigation they do not have to. Further, we believe it is reasonable to assume that misappropriated confidential information, not of trade secret nature, could give Defendants an unfair advantage and therefore allow them to unfairly compete in the pressure washer market. Consequently, the Motion is denied as to count IV.

ii. Count VII - Tortious Interference

To support Count VII, FAIP alleges that the Sistema Defendants, either separately or jointly, interfered with the Tobinski Conflict of Interest Agreement by enticing Tobinski to break his contract "to [*18] not compete against FAIP and/or solicit suppliers, customers, employees, and/or consultants from FAIP." Further, FAIP suggests that Sistema and USA knew or at least had reason to know about the contract. FAIP premises its claim, by incorporation, on the allegation that Tobinski provided the Sistema Defendants with FAIP's confidential information. As previously mentioned, we believe confidential information encompasses a broader amount of information than merely trade secrets. Therefore, once again we find it reasonable to assume that the Sistema Defendants could have committed the alleged harm by enticing Tobinski to breach his confidentiality agreement by providing them with confidential information not of a trade secret nature. Consequently, the Motion is denied as to count VII.

iii. Counts VIII & IX - Breach & Inducement of Breach of Fiduciary Duty

Defendants contend that the ITSA preempts Counts VIII and IX because FAIP relies exclusively on Tobinski's alleged misappropriation of trade secrets in bringing such. Count VIII alleges that Tobinski disclosed FAIP's confidential, proprietary and trade secret information without authorization thereby breaching his fiduciary [*19] duty, that he worked on behalf of the Sistema entities while a FAIP employee, by soliciting suppliers, customers, employees, and/or consultants from FAIP for the benefit of either Sistema and/or USA, and that he used FAIP's computer to engage in criminal activities. Count IX incorporates the allegations of count VIII, and additionally alleges that the Sistema Defendants induced Tobinski to commit the wrongdoings resulting in the alleged breach. Once again, FAIP alleges that confidential material was utilized by Tobinski in breaching his fiduciary duty, and we find such to encompass more than merely trade secrets. Consequently, we find Counts VIII and IX to be predicated on more than the mere misappropriation of trade secrets alone. Therefore, the Motion is denied as to counts VIII and IX.

CONCLUSION

For the reasons set forth above, Defendants' Motion to Dismiss FAIP's amended complaint pursuant to Fed. R. Civ. P. 12(b)(2) and (6) is denied.

Charles P. Kocoras

Chief Judge

United States District Court

Dated: December 14, 2005